IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.225 OF 2003

Sakharam Babu Kumbhar & ors. ...Petitioners
vs.
Dnyandeo Krishna Chopade & Ors. ...Respondents

Mr.V.B.Rajure for the Petitioners
Mr.A.B.Borkar for Respondent No.2.

CORAM: A.S.OKA,J.
DATE : APRIL 9,2007.

P.C.:

1. On 20th December 2002, this Court issued notice for final disposal at admission stage. Office noting shows that the Respondents are duly served with the notice. The second Respondent is represented by an Advocate.

2. On the last date, I have heard the submissions of the learned Advocates for the parties. By this Writ Petition under Article 227 of Constitution of India, the Petitioners have challenged the order dated 16th April 1992 passed by the Additional Tahsildar and the Agricultural Lands Tribunal at Kagal, District Kolhapur and orders in Appeal and in Revision Application preferred by the Petitioner by which the order of the Agricultural Lands Tribunal has been confirmed. By the aid order dated 16th April 1992, the Additional Tahsildar cancelled the earlier certificate dated 9th March 1988 issued under section 32-M of the Bombay Tenancy and Agricultural Lands Act,1948 (hereinafter referred to as the Tenancy Act) and directed that a fresh certificate under section 32-M be issued after incorporating the shares of various parties in the said certificate.

3. It must be noted here that by order dated 15th November 1965, the Agricultural Lands Tribunal declared the Petitioners and the Respondents as tenants in respect of the land in dispute and the said order has attained finality. The grievance of the learned Advocate for the Petitioners is that the learned Additional Tahsildar could not have passed the order dated 16th April 1992 without there being any modification of the order passed under 32-G of the Tenancy Act. He also submitted that the said order could not have passed without giving an opportunity of being heard to the Petitioners. The learned Advocate for the second Respondent supported the impugned Judgments and Orders.

4. I have considered the submissions. It appears that it is an undisputed position that the order dated 16th April 1992 was passed without giving notice to the Petitioners. This contention was raised before the learned Member of the Maharashtra Revenue Tribunal. One of the observations made by the Tribunal while dealing with this submission is that it is for the Petitioners to satisfy that the shares specified in the order impugned passed by the Agricultural Lands Tribunal are not proper.

5. The effect was given to the order dated 15th November 1965 passed under section 32-G of the Tenancy Act by issuing a certificate under section 32-M on 9th March 1988. A new certificate incorporating alleged shares of the parties was

ordered to be issued by the impugned order dated 16th April 1992. The said order certainly affects the rights of the Petitioners and therefore, the same could not have been passed without notice to the Petitioners and without giving an opportunity to the Petitioners of being heard. Only on this ground, the impugned Orders deserve to be quashed and set aside. The question as to whether the Agricultural Lands Tribunal could have cancelled the earlier certificate and ordered issuance of a fresh certificate is required to be kept open.

6.Hence, the Writ Petition is disposed of by passing the following order :

i) Impugned Orders (Exh.D, E and F) are quashed and set aside and the matter is remanded to the learned Additional Tahsildar and the Agricultural Lands Tribunal at Kagal, District Kolhapur. ii)The learned Additional Tahsildar will issue notice to the Petitioners and all concerned parties and after giving an opportunity of being heard to all of them will pass an appropriate order in accordance with law.

iii) All contentions of the parties on merits are expressly kept open.

iv) Writ Petition is partly allowed in above terms.

v) Parties and the concerned Authorities to act upon an authenticated copy of this order.

JUDGE